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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/790,144 | 03/02/2004 | Michinori Ikezoe | 023971-0382 | 3002 |

22428 7590 05/29/2007
FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

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| EXAMINER |
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PHAN, HAU VAN

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| ART UNIT | PAPER NUMBER |
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3618

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| MAIL DATE | DELIVERY MODE |
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05/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|-----------------|-------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/790,144 | IKEZOE, MICHINORI | |
| | Examiner | Art Unit | |
| | Hau V. Phan | 3618 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 2 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-13 is/are allowed.
- 6) ☒ Claim(s) 3 is/are rejected.
- 7) ☒ Claim(s) 4-7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/2/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of group II, claims 3-13 in the reply filed on 4/10/2007 is acknowledged.
2. Claims 1-2 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/10/2007.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on 3/2/2004 has been considered.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ovshinsky et al. (2003/0129459) in view of Takee et al. (6,368,748).**

Pvshinsky et al. in figures 1-5, disclose a hybrid electric vehicle comprising a plurality of sealed nickel metal hydride storage cells, each of the storage cells having a

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positive electrode containing nickel as a positive electrode active material, a negative electrode containing a hydrogen-absorbing alloy as a negative electrode active material. Pvshinsky et al. fail to show the negative electrode having a theoretical capacity larger than a theoretical capacity of the positive electrode so as to provide a charge reserve capacity when the positive electrode is in a fully charged state and to provide a discharge reserve capacity when the positive electrode is in a fully discharged state, a ratio of the charge reserve capacity to the discharge reserve capacity ranging from 1 : 0 to 1 : 0.5; a separator interposed between the positive electrode and the negative electrode; and an electrolyte immersing therein the positive electrode and the negative electrode.

Takee et al. in figure 1, teach a nickel metal hydride storage cell having a positive electrode and a negative containing a hydrogen-absorbing electrode. The negative electrode has a theoretical capacity larger than a theoretical capacity of the positive electrode. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the hydride storage cells of Ovshinsky et al. with the nickel metal hydride storage cells comprising a negative electrode having a theoretical capacity larger than a theoretical capacity of a positive electrode as taught by Takee et al. in order to causes no rise in the cell.

Allowable Subject Matter

6. Claims 4-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. Claims 8-13 are allowed.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kumar discloses a hybrid energy power Sugiura et al. discloses a DC power supply fuel cell.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V. Phan whose telephone number is 571-272-6696. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hau V Phan
Primary Examiner
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5/19/07